

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

IN RE:)	
)	
LEROY H. WHALEY,)	CHAPTER 13 BANKRUPTCY
MARY WHALEY)	CASE NO. 94-41248
)	
DEBTOR)	

ORDER

_____On February 2, 1995, the Court issued a notice requiring that Debtors show cause why a conversion has not been filed in this case. The Court's notice was issued in response to the representation which had been made by Debtors' counsel at a confirmation hearing on January 11, 1995, to the affect that the case was going to be converted from Chapter 13 to Chapter 7. Based on that representation, the confirmation hearing was continued in anticipation of receiving Debtors' conversion request. Such a request may be made by a debtor as a matter of right and, upon receipt of such request, the case must immediately thereafter be converted in accordance with a debtor's request.

When no such request was filed, the matter was further considered by the Court on March 16, 1995 in response to the show cause notice. At that hearing, the attorney for the Debtors represented to the Court that a conversion request had not been filed because of the failure of Debtors to pay

additional attorney's fees of \$300.00. The attorney who made that representation was not the attorney of record for Debtors in the case. The Court scheduled a further hearing on March 21, 1995, to hear from the attorney of record as to whether the requirement for the payment of the additional filing fees was accurately imposed.

It appears from representations made at the March 21st hearing that Debtors were in fact required to pay an additional filing fee of \$300.00. In addition it was urged that Debtors were told that the conversion would be filed without the payment of the fees and that the failure to file the conversion was caused by the unwillingness of Debtors to come into the attorney's office to sign the necessary documents to request the conversion. The Court is unable to conclude at this time that the insistence upon the additional \$300.00 was the sole cause of the failure of Debtors to file the conversion. On the other hand, it is possible that the request for the payment of the additional fees, and the inability of Debtors to pay those fees, may have caused the Debtors to decide to abandon the case. This is a distressing prospect.

When an attorney undertakes to represent a client in this Court, the attorney is ethically bound thereafter to represent the client's interest diligently.¹ That requirement continues

¹ The State Bar of Georgia requires diligent, competent representation on the part of a lawyer. See Handbook of State Bar of Georgia, § 2, D.R. 6-101 (requiring competent

until either the case is concluded or the attorney is relieved from the representation of the client. When confirmation is denied in a Chapter 13 case, a debtor has the right to convert the case to Chapter 7 without the payment of any additional filing fees. Such a conversion is often preferable to dismissal for this reason. Whether or not a debtor decides to elect to convert a Chapter 13 case to Chapter 7 is a decision which may require assistance of counsel. If counsel is unwilling to assist the debtor in making this decision or unwilling to file the papers because of the debtor's inability to pay additional attorney's fees, the debtor may lose a valuable right upon dismissal of the case.

This case was dismissed at the March 16th hearing. That dismissal was not disturbed at the March 21st hearing. There is no way to know whether the insistence upon the payment of additional attorney's fees caused this case to be dismissed instead of converted. This order is entered for the purpose of advising the Debtors and other parties at interest of this Court's requirement that the attorney for the debtor continue to represent the debtor's best interest, in every respect regardless of the payment of fees for as long as that

representation); D.R. 7-101 (requiring zealous representation). Besides state bar requirements, the Bankruptcy Court has a great deal of latitude in regulating attorneys conduct and requiring diligent representation. In re Lowe, 18 B.R. 20 (Bankr. N.D. Ga. 1981) (court may order reduction or refund of fees and may also prohibit attorneys from practicing before the court).

representation continues. Specifically, it may be necessary for the attorney to file a conversion request in a Chapter 13 case regardless of the willingness or the ability of the debtor to pay additional attorney's fees.

If Debtors in this case request reconsideration of the order dismissing this case within ten (10) days of the entry of this order, the Court will schedule a hearing and permit Debtors and/or their attorney to supplement the record as to the failure of the Debtors to file the conversion motion. If it appears from such a showing that the conversion was not filed because of the attorney's insistence on the payment of additional fees, the dismissal order will be vacated.

SO ORDERED this 3rd day of April, 1995.

JAMES D. WALKER, JR., Judge
United States Bankruptcy Court